

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
PROVIDENT LIFE AND CASUALTY
INSURANCE COMPANY,

Plaintiff,

-VS.-

EDDY HOFFMAN A/K/A ISAAC
HOFFMAN,

Defendant.
-----X

Civil Action No.: 07-cv-4620

**PLAINTIFF'S REPLY TO
DEFENDANT'S AMENDED
COUNTERCLAIM**

Plaintiff, Provident Life and Casualty Insurance Company ("Provident"), by and through its attorneys, White and Williams LLP, hereby replies to the Counter-Claim of defendant, Eddy Hoffman a/k/a Isaac Hoffman ("Hoffman"), as follows:

JURISDICTION

1. Provident admits that this Court has jurisdiction over the Counterclaims as alleged in paragraph 56 of the Counterclaim.

2. Provident denies that Hoffman complied with the terms of his disability insurance policy. Provident denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 57 of the Counterclaim.

3. Provident admits that Hoffman applied for disability benefits and denies the truth of the remaining allegations in paragraph 58 of the Counterclaim.

4. Provident denies the allegations contained in paragraph 59 of the Counterclaim.

5. Provident denies the allegations contained in paragraph 60 of the Counterclaim.

6. Provident denies the allegations contained in paragraph 61 of the Counterclaim.

7. Provident denies the allegations contained in paragraph 62 of the Counterclaim.

8. Provident denies the allegations contained in paragraph 63 of the Counterclaim.

9. Provident denies the allegations contained in paragraph 64 of the Counterclaim.

10. Provident denies the allegations contained in paragraph 65 of the Counterclaim.

11. Provident denies the allegations contained in paragraph 66 of the Counterclaim.

12. Provident denies the allegations contained in paragraph 67 of the Counterclaim.

**AS AND FOR PLAINTIFF'S ANSWER TO DEFENDANT'S FIRST AMENDED
COUNTER-CLAIM AGAINST PLAINTIFF PROVIDENT**

13. Provident repeats and restates each and every response to paragraph 56 through 67 of the Counterclaim as if fully set forth at length herein. To the extent that an answer is required, Provident denies the allegations contained in paragraph 68 of the Counterclaim.

14. Provident denies the allegations contained in paragraph 69 of the Counterclaim.

15. Provident denies the allegations contained in paragraph 70 of the Counterclaim.

16. Provident denies the allegations contained in paragraph 71 of the Counterclaim.

AS AND FOR PLAINTIFF'S ANSWER TO DEFENDANT'S SECOND AMENDED COUNTER-CLAIM AGAINST PLAINTIFF PROVIDENT

17. Provident repeats and restates each and every response to paragraph 56 through 71 of the Counterclaim as if fully set forth at length herein. To the extent that an answer is required, Provident denies the allegations contained in paragraph 72 of the Counterclaim.

18. Provident denies the allegations contained in paragraph 73 of the Counterclaim.

19. Provident denies the allegations contained in paragraph 74 of the Counterclaim.

AS AND FOR PLAINTIFF'S ANSWER TO DEFENDANT'S THIRD AMENDED COUNTER-CLAIM AGAINST PLAINTIFF PROVIDENT

20. Provident repeats and restates each and every response to paragraph 56 through 74 of the Counterclaim as if fully set forth at length herein. To the extent that an answer is required, Provident denies the allegations contained in paragraph 75 of the Counterclaim.

21. Provident denies the allegations contained in paragraph 76 of the Counterclaim.

22. Provident denies the allegations contained in paragraph 77 of the Counterclaim.

WHEREFORE, Provident demands judgment against the Defendant, Eddy Hoffman a/k/a Isaac Hoffman, for the relief demanded in the Complaint, and dismissing the Counter-Claim with prejudice, and awarding Provident costs, expenses, disbursements, fees, attorneys' fees, and such other and further relief deemed just and proper by the court.

AFFIRMATIVE DEFENSES

1. Defendant Hoffman's Counter-Claim fails to state a cause of action upon which relief can be granted.

2. HIPAA does not apply to Plaintiff Provident. Therefore, as Plaintiff could in no way violate that which does not apply to it, Defendant Hoffman's Counter Claim for relief is barred by Legal Impossibility.

3. Defendant Hoffman's Counter-Claim for relief is barred by the Doctrine of Estoppel.

4. Assuming *arguendo* that HIPAA could apply to this case, Defendant Hoffman has provided Plaintiff Provident with numerous HIPAA waiver forms and at no point revoked those waivers wherefore, Defendant Hoffman's Counter-Claim for relief is barred by the Doctrine of Waiver.

5. Defendant Hoffman's demand for damages on the Counter-Claim is precluded and barred by the Doctrine of Unclean Hands.

6. Defendant Hoffman's demand for damages on the Counter-Claim is precluded and barred by the Doctrine of Unjust Enrichment.

7. Provident has not breached any duty, contractual or otherwise, owed to Defendant Hoffman.

8. Provident owed no duty to Defendant Hoffman.

9. Provident's actions and/or inactions were, at all times, lawful, reasonable, and appropriate.

10. Provident's actions and/or inactions were, at all times, within conformity and compliance with the terms and conditions of the subject insurance policy or policies.

11. Provident reserves the right to amend this Answer To The Counter-Claim to assert additional separate defenses that may arise during the course of discovery.

Dated: July 27, 2007

Respectfully submitted,
WHITE AND WILLIAMS LLP

By: 

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*Attorneys for Plaintiff, Provident Life and
Casualty Insurance Company*

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AFFIRMATION OF SERVICE

ROBERT WRIGHT, an attorney admitted to practice law in the courts of the State of New York and before the United States District Court for the Southern District of New York, affirms the following under the penalty of perjury:

1. I am a partner with the law firm of White and Williams LLP, attorneys for the Plaintiff, Provident Life and Casualty Insurance Company, in the above-captioned action.

2. On July 27, 2007, I caused to be served by Federal Express overnight mail the within Reply to the Defendant's Amended Counter-Claim, and the within Affirmation of Service, upon:

Arnold H. Pedowitz
Pedowitz & Meister, LLP
1501 Broadway, Suite 800
New York, New York 10036
(212) 403-7321
Attorneys for Defendant, Eddy Hoffman a/k/a Isaac Hoffman

said address being the last known address by said party for that purpose.

Dated: July 27, 2007

Respectfully submitted,
WHITE AND WILLIAMS LLP

By: _____

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